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ALEXANDER L. STEVAS
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No. 84-773

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MICHAEL BENDER, *et al.*,

Petitioners,

v.

THE WILLIAMSPORT AREA SCHOOL DISTRICT, *et al.*,

Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS, AMICUS CURIAE, IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF THE PETITION FOR CERTIORARI

The Catholic League for Religious and Civil Rights respectfully moves this Court, pursuant to Rule 36.3 of its rules, for leave to file the accompanying brief *amicus curiae* in support of petition No. 84-723. The consent of the parties has been sought. While written consent has been received from one of the two parties, written consent has not been received from the other party, the respondents.

Amicus believes that the decision and reasoning of the court of appeals follows a precedent of hostility and discrimination toward religiously oriented speech. This decision impairs the religious freedom of high school students and, ultimately, of all citizens. *Amicus* believes that these religious freedom concerns may not be fully presented to the Court unless the brief *amicus curiae* is considered.

Therefore, *amicus* requests this Court to grant this motion and consider the accompanying brief in support of the petition for certiorari.

Respectfully submitted,

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BRIEF FOR THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS, AMICUS CURIAE, IN SUPPORT OF PETITIONERS

INTEREST OF AMICUS CURIAE

The Catholic League for Religious and Civil Rights is a non-profit voluntary association, national in membership, organized to promote good will and harmonious relations in the community, to combat all forms of religious prejudice and discrimination and to defend the human rights and sanctity of each human life.

The Catholic League possesses a firm commitment to the preservation of all the principles embodied in the First Amendment to the U.S. Constitution. As a result of the dangers which the Catholic League believes an adverse judgment in this case would pose to these fundamental rights, the League has sought to file this brief of amicus curiae on behalf of the petitioners in this action.

STATEMENT OF THE CASE AND ISSUES PRESENTED

Amicus curiae, the Catholic League for Religious and Civil Rights, adopts and incorporates by reference both the statement

of the case and of issues presented which appear in the brief of Plaintiffs-Petitioners.

SUMMARY OF ARGUMENT

Many of the difficulties in the decision of the Court of Appeals in this matter stem from its reliance upon confusing legal precedent and, most particularly, the Second Circuit's ruling in *Brandon v. Board of Education of Guilderland Central Schools*, 635 F.2d 971 (2nd Cir. 1980), *cert. denied*, 454 U.S. 1154 (1981). The *Brandon* ruling is irretrievably flawed in two significant respects. First, the *Brandon* court misinterpreted the scope and extent of the free speech rights of high school students by failing to find the existence of a limited public forum. Second, the court misinterpreted the distinction between accommodation and advancement of religion in ruling that permitting a group of high school students to voluntarily gather prior to the school day's commencement to offer a prayer violated the Establishment Clause of the First Amendment. Given the confusion *Brandon* has subsequently imposed on the field of equal access, particularly evidenced by the case currently before this Court, the reasoning underlying the *Brandon* decision should be repudiated and the ruling of the Court of Appeals should be reversed, following a grant of the petition for certiorari.

INTRODUCTION

The United States Court of Appeals for the Third Circuit, in issuing its recent ruling in *Bender v. Williamsport*, 741 F.2d 538 (3rd Cir. 1984), emphasized, "We are therefore left with no definitive guidance from the Court as to the proper direction to take in this unique circumstance." *Id.* at 557. The court accurately assessed the desperate need of the lower courts in this area for guidance from this Court. The need for guidance however, concerns not the proper balancing of the Free Speech and Establishment Clause interests of which the Third Circuit spoke, but concerns rather the proper method of analyzing alleged Establishment Clause violations in equal access cases.

The numerous conflicting rulings in these areas illustrate the vital need for such a determination. *Compare, Nartowicz v.*

Clayton County School District, 736 F.2d 646 (11th Cir. 1984), *with Lubbock Civil Liberties Union v. Lubbock Independent School District*, 669 F.2d 1038, *reh'g denied*, 680 F.2d 424 (5th Cir. 1982), *cert. denied*, 103 S. Ct. 800 (1983); *Johnson v. Huntington Beach Union High School District*, 137 Cal. Rptr. 43, 68 Cal. App. 3d 1, *cert. denied*, 437 U.S. 887 (1977). Much of the confusion which presently pervades this area was initiated by a ruling of the United States Court of Appeals for the Second Circuit, *Brandon v. Board of Education of Guilderland Central Schools*, 635 F.2d 971 (2nd Cir. 1980), *cert. denied*, 454 U.S. 1154 (1981). Indeed, the *Brandon* ruling has extensively affected most of the subsequent cases in this area. Though not controlling precedent outside of its circuit, its impact in this area has been substantial. In fact, it was often cited by the Third Circuit in *Bender* as support for that court's ultimate Establishment Clause ruling. Given the constitutional infirmities present in the *Brandon* ruling, amicus curiae respectfully requests that the Court now overrule it.

ARGUMENT

THE SECOND CIRCUIT'S RULING IN *BRANDON* DIRECTLY CONFLICTS WITH THIS COURT'S INTERPRETATION OF THE FREE SPEECH AND ESTABLISHMENT CLAUSES OF THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

In *Brandon*, a group of high school students, organized as "Students for Voluntary Prayer," requested permission to meet in a classroom for a group prayer immediately before the school day commenced. The group noted that it was only seeking the same access to school facilities which other student groups already enjoyed, and that its activities were voluntary and would not conflict with other school functions. When their request was denied by both their principal and school district the students brought suit for declaratory, injunctive and monetary relief. They alleged that such a denial violated their First Amendment Rights.

The District Court granted the school district's motion for summary judgment. On appeal, the Second Circuit affirmed that

decision, holding that the refusal did not violate the students' rights to free speech, freedom to exercise their religion, freedom of association, or equal protection. In addition the court concluded that such prayer meetings were prohibited by the Establishment Clause.

A. *Brandon* Misinterprets The Free Speech Rights Of High School Students.

Brandon's ruling on the Establishment Clause issue there presented has had a far greater impact on subsequent courts than its Free Speech determination. In fact, this Court's ruling in *Widmar v. Vincent*, 454 U.S. 263 (1981), only a week prior to the Court's denial of the students' request for a writ of certiorari in *Brandon*, 454 U.S. 1123 (1981), served implicitly to reverse the *Brandon* court's determination on the Free Speech issue. However, some attention should be paid to the clearly erroneous conclusion which the court in *Brandon* arrived at regarding this fundamental right.

In *Widmar*, the Court upheld a request by a student group at the University of Missouri-Kansas City, which sought access to university-owned facilities in order to meet for prayer, Bible study and worship. This Court held that the university's content-based restriction on the use of their facilities violated the students' right to free speech and was not warranted by a compelling state interest. As a result of *Widmar's* ruling, significant errors in the Second Circuit's constitutional interpretation in *Brandon* become immediately recognizable.

It is true that local school boards are afforded broad discretion in the management of their schools' affairs. *See, e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). However, while "Boards of Education . . . have . . . important, delicate, and highly discretionary functions . . . they may not [exceed] . . . the limits of the Bill of Rights." *Board of Education, Island Trees Union Free School District v. Pico*, 102 S. Ct. 2799, 2807 (1982). Therefore, as the Court emphasized in *Tinker v. Des Moines School District*, 393 U.S. 503 (1969), students do not "shed their rights to freedom of speech or expression at the school house gate. . . . They are possessed of fundamental rights which the state must respect . . . [and] . . . in the absence

of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views." *Id.* at 506, 511. Despite this knowledge, the court in *Brandon* incorrectly interpreted the extent of students' First Amendment right to free speech in at least two ways.

First, when the court in *Brandon* analyzed the students' free speech claim, it erroneously stated that religious speech, including prayer, was not to be accorded the same constitutional protection as other types of speech. *Brandon,* 635 F.2d at 980. Yet, such a distinction was specifically rejected in *Widmar.* The Court responded to any attempt to relegate religious speech to such a secondary status by noting that such a contention lacked any "*intelligible content.*" *Widmar,* 454 U.S. at 269 n.6 (emphasis added).

Second, and further developing this view of religious speech as possessing diminished constitutional value, the *Brandon* court concluded that a high school was not a public forum where religious views could be aired. It is true that a high school does not meet the traditional test for public forums. "The primary factor in determining whether property . . . is a public forum is how the locale is used." *International Society for Krishna Consciousness v. New Jersey Sports and Exposition Authority,* 691 F.2d 155, 160 (3rd Cir. 1982). Thus, places traditionally or normally reserved for public assembly, debate, etc. . . . are considered public forums. *See, e.g., Hague v. C.I.O.,* 307 U.S. 496 (1939). Since high schools are not normally dedicated to such activities, they would not satisfy the traditional test for a public forum.

However, public property can be classified as a "limited" public forum. A limited public forum arises as the result of the state's decision to allow the property to be used for expressive activity. A prime example of such a limited public forum arose in *Widmar.* There, the Court stated that "through its policy of accommodating . . . meetings, the University . . . created a forum generally open for use by student groups." *Widmar,* 454 U.S. at 267. The Court acknowledged that the government would be permitted to impose restrictions on the use of the limited public forum so long as they were necessitated by the purpose for which the forum was created. *Id.* at 267. Thus, with respect to limited public forums created in a school setting, the government could

permissibly restrict access to the forum from individuals "outside" the school.

Yet, the Court emphatically warned that:

> [I]n order to justify discriminatory exclusion from a public forum based on the religious content of a group's intended speech, the University must . . . satisfy the standard of review appropriate to content-based exclusions. It must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.

Id. at 269-70. *See also Carey v. Brown*, 447 U.S. 455, 461, 464-65 (1980).

The Court noted that "[t]he Constitution forbids a State to enforce certain exclusions from a forum generally open to the public, even if it was not required to create the forum in the first place." *Id.* at 267-68.

Through making its facilities open to use by all student groups, it is beyond dispute that the school in *Brandon* created a similar, "limited" public forum. To read *Widmar* so narrowly as to say that only universities, and not high schools, possess the capability to become limited public forums, completely misconceives this doctrine. On the contrary, this Court noted in *Tinker* that a public high school "is peculiarly the 'marketplace of ideas,' " *Tinker*, 393 U.S. at 512, though it recognized that the high school setting possessed "special characteristics" which had to be taken into account. *Id.* at 506. Thus, given the proper circumstances, a high school could take on a limited public forum status.

In its ruling in *Bender v. Williamsport*, 563 F. Supp. 697 (M.D. Pa. 1983), the district court enumerated "special circumstances" whereby a high school would not qualify as a limited public forum. However, none of these were evident in *Brandon*. The school district at no time claimed that a voluntary prayer meeting prior to the school day's commencement would result in order or discipline problems. Nor was it ever the school district or principal's contention that there were an excessive number of requests from other student groups for such meetings. And the record is likewise devoid of any claim that such groups only met as an extension of the school's curriculum. Consequently, since none of these special circumstances existed, and since other

groups covering a wide range of interests were permitted to meet prior to the school day, it is clear that the school had created a limited public forum for its students' use. Accordingly, any content-based restriction on that forum's use constitutionally had to be narrowly drawn and necessary to serve a compelling state interest. *Widmar*, 454 U.S. at 270.

B. Precluding Students From Voluntarily Gathering In School-Owned Facilities Prior To The School Day's Commencement To Engage In Group Prayer Traverses The Historical Goals Of Neutrality And Accommodation Rooted Within The Establishment Clause.

The Third Circuit's ruling in *Bender* encountered many of the same problems of previous lower court decisions resolving the Establishment Clause issue in light of the Second Circuit's ruling in *Brandon*. The court in *Bender* did arrive at the issue in a different manner than the *Brandon* court. *Bender* properly avoided the clearly flawed analysis of the *Brandon* decision in the Free Speech realm and concluded that the denial of the student group's (Petros) request would infringe upon their constitutional right of Free Speech and could only be justified by the existence of a compelling state interest, *Bender*, 741 F.2d at 550, such as the avoidance of an Establishment Clause violation. The *Brandon* court, on the other hand, only addressed the Establishment Clause issue as a result of a potential Free Exercise contention (which the court subsequently rejected). However, though reaching the issue through different approaches, both of these judicial bodies used similar reasoning to arrive at the identical conclusion—that permitting these school groups to meet would be violative of the Establishment Clause and that such a violation outweighed the students' Free Exercise (*Brandon*) or Free Speech (*Bender*) rights. However, both of these rulings are in complete discord with the historical purpose behind the Establishment Clause.

1. The *Brandon* court properly concludes that the school's policy of permitting students to gather in school owned facilities possesses a secular purpose.

A tripartite test exists for Establishment Clause adjudication, whether it be merely a guideline, *Lynch v. Donnelly*, 104 S. Ct.

1355, 1361-1362 (1984) or necessary measure of constitutionality, *Lynch*, 104 S. Ct. at 1372 n.2 (Brennan, J., dissenting): "First, the [governmental policy] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, [it] must not foster an excessive government entanglement with religion." *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971). If any one of the prongs of the *Lemon* test is not met, then the policy may be held to violate the Establishment Clause. *See, e.g., Lemon*, 403 U.S. at 612; *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973).

The *Brandon* court did correctly apply the first prong of the Establishment Clause. The judge noted that this prong's focus was on whether the policy which permitted the activity to take place had a secular purpose. *Brandon*, 635 F.2d at 978. It was axiomatic that an equal access policy for all student groups was rooted in a secular purpose. The mere fact that a religious group wished to take advantage of this policy did not convert the policy's purpose into an impermissible nonsecular one. *Brandon*, 635 F.2d at 978. *See also Widmar*, 454 U.S. at 271-72 n.10.

2. *Brandon's* determination that a content-neutral equal access policy has the primary effect of advancing religion reflects an inaccurate and inconsistent view of the judicial treatment of high school students.

The *Brandon* court stated that because an impressionable student might believe the state was sponsoring a particular religious creed, such an equal access policy was "too dangerous to permit." *Brandon*, 635 F.2d at 978. In reaching this conclusion, the *Brandon* court is in complete disharmony with the reasoning of this Court in *Widmar*. *Widmar* stated that the effect of according religious groups equal access to the limited public forum would not be an advancement of religion, but rather merely an accommodation of religion. *Widmar*, 454 U.S. at 273. Two factors enabled this Court to reach this conclusion:

> First, an open forum . . . does not confer any imprimatur of State approval on religious sects or practices[;] . . . such a policy "would no more commit the University . . . to religious goals" than it is "now committed to the goals of [other groups]" eligible to use its facilities.

> Second, the forum is available to a broad class of nonreligious as well as religious speakers; . . . [t]he provision of benefits to so broad a spectrum is an important index of secular effect.

Id. at 274 (citations omitted).

Both of these factors were present in *Brandon*. The limited public forum was available to a broad range of nonreligious school organizations. (While the number of such groups was significantly less than the 100 groups which existed in *Widmar*, when one takes into account the enrollment difference between the two schools, the two become proportionally similar.) In addition, allowing a student group to gather on state-owned facilities confers no more imprimatur of state approval of religion than it would confer approval of that which was printed in the school's student newspaper, were the newspaper staff to meet in the same facilities.

There is a clear distinction between advancement and accommodation; a distinction which escaped the judges in *Brandon*. Regrettably, lacking the guidance of *Widmar*, the court in *Brandon* mistakenly relied on the precedents of *Abington Township School District v. Schempp*, 374 U.S. 203 (1963) and *Engel v. Vitale*, 370 U.S. 421 (1962). Yet, the obvious factual differences which existed between these cases and the scenario present in *Brandon* graphically displayed the inappropriateness of their use. Failing to grasp these distinctions, the *Brandon* court came to the inaccurate conclusion that advancement results not only from compulsory action, *Schempp; Engel* (objecting students had no choice but to refrain conspicuously from participating in official religious activity) but also from purely voluntary action undertaken completely apart from the other students, *Brandon*. Such a broad rule was certainly not intended by this Court when it proscribed conduct which had the "primary" effect of "advancing" religion.

Moreover, the *Brandon* court's incomprehensible assessment of the maturity level and intellectual capacity of these high school students further evidences the court's inability to recognize the distinction which exists between advancement and accommodation. While *Widmar's* statement, that college-aged students were

in a position to appreciate that an equal access policy did not imply state approval of the participating groups' activities, does not literally encompass the high school setting, at no time did this Court determine that the relevant maturity and intellect was restricted to college students. Indeed, such a restriction defies common knowledge and common sense.

Undeniably, high school student are not yet adults. Yet, this fact alone does not necessitate a determination that they are helpless individuals, dependent totally upon others to decide for them the important questions which face our society; nor have courts viewed high school students in such a light. The author of *Brandon*, Judge Kaufman, himself admitted this fact. In deciding that tenth grade students possessed sufficient maturity that a teacher's refusal to lead a flag salute would not have a destructive effect on the students, Judge Kaufman stated:

> We do well to note that her pupils were not fresh out of their cradles . . . [They were] students ranging in ages between 14 and 16 years . . . [who] at this stage of development are approaching an age when they form their own judgments. They readily perceive the existence of conflicts in the world around them[;] . . . [n]or is this knowledge to be dreaded. As we said in *James*: "Schools must play a central role in preparing their students to think and analyze and to recognize the demagogue."

Russo v. Central School District No. 1, 469 F.2d 623, 633 (2nd Cir. 1972).

Other jurisdictions have also described these same students as "surprisingly sophsticated, intelligent, and discerning . . . far from easy prey for even the most forcefully expressed, cogent, and persuasive words." *Wilson v. Chancellor*, 418 F. Supp. 1358, 1368 (D. Or. 1976). And in *James v. Board of Education*, 461 F.2d 566 (2nd Cir. 1971), it was emphasized that "the court can take judicial notice of the progressively higher levels of intellectual and emotional development of students in the latter grades of secondary schools[;] . . . [h]igh school students . . . are at an age approaching both adulthood and franchise." *James*, 461 F.2d at 574. Moreover, there is empirical evidence that supports the judicial notice of the high school students' intellectual maturity.

See Note, *The Constitutional Dimensions of Student-Initiated Religious Activity in Public High Schools*, 92 Yale L.J. 499, 507-509 (1983).

It is precisely because of this recognized level of maturity present in today's high school student that a federal district court decided that high school students could handle reading information about contraception and abortion in their school newspaper. *Bayer v. Kinzler*, 383 F. Supp. 1164 (E.D.N.Y. 1974), *aff'd without opinion*, 515 F.2d 504 (2nd Cir. 1975). In fact, this very Court has even concluded that these same individuals are entitled not only to information concerning such topics as abortion and contraception but also to utilize such methods absent their parents' *consent* or *knowledge*. *Accord Bellotti v. Baird*, 443 U.S. 622 (1979); *Carey v. Population Services International*, 431 U.S. 678 (1977); *Danforth v. Planned Parenthood of Cent. Missouri*, 428 U.S. 52 (1976); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). Further, they are viewed with sufficient intellectual capacity to be permitted to bear armbands in protest against the Vietnam War, *see Tinker*, and to refuse to salute or pledge allegiance to the flag, *see West Virginia Board of Educ. v. Barnette*, 319 U.S. 624 (1943). It is inherently inconsistent to hold that high school students are mature enough to handle the political, social and moral issues facing society today, but lack sufficient insight to distinguish a government-run event from a pure student-initiated activity.

Moreover, if high school students possess such a high degree of impressionability, then logic would dictate that these same individuals will interpret the school's content-based restriction in an otherwise open forum as a manifestation of government hostility toward religion. How is it that these "impressionable" students are unable to determine whether the state is implying, tacitly or otherwise, an approval of religion, but they are *mature* enough to realize that the state's policy is not rooted in a hostility towards religion? The Establishment Clause prohibits both government endorsement and disapproval of religion. *Lynch*, 104 S. Ct. at 1368 (O'Connor, J., concurring); *Committee for Public Educ. v. Regan*, 444 U.S. 646, 653 (1980); *Lemon*, 403 U.S. at 612. The State must be neutral in this area. *Nyquist*, 413 U.S. at 782. As was properly pointed out by the dissent in *Lubbock Civil Liberties Union v. Lubbock Independent School District*, 680 F.2d 424

(5th Cir. 1982): "We should not forget, however, that the young student may also be given the impression that our government and the court and the schools are *hostile* to all religious beliefs and practice. I would consider that a very great wrong to the children, to the Constitution, and the nation." *Id.* at 426 (Reavley, J., dissenting) (emphasis added). *See also Bender*, 741 F.2d at 565 (Adams, J., dissenting). Indeed such a hostile impression may already have been implanted in the minds of some of our youth. *See Hearings on S. 425, S. 815, & S. 1059 Before the Senate Committee on the Judiciary*, 98th Cong. 1st Sess. (1983) (statement of Bonnie Bailey, student of Monterey High School, Lubbock, Texas) ("The impression of many students is that the school administration or the school board or the courts, or all of them, are hostile toward religion[,] . . . [and that the government] is against religion") Further, the court in *Brandon* was strangely silent on this point.

3. The *Brandon* court's finding of an excessive entanglement between religion and government is completely incompatible with prior and subsequent Supreme Court precedent.

Brandon's ruling that permitting a religious student group to meet would foster an excessive entanglement between religion and the State also lacks any precedential support. The court concluded that since school officials would be required to supervise the meetings in order to ensure that they were voluntary and orderly, this would yield an excessive entanglement and was impermissible. *Brandon*, 635 F.2d at 979.

Such minimal supervision, however, would involve no more of an "entanglement" than that which occurs when the State provides police or fire protection to a church. Yet this very Court has determined that such protections do not violate the Establishment Clause. *See Roemer v. Board of Public Works of Maryland*, 426 U.S. 736, 747 (1976); *Everson v. Board of Education of Ewing Township*, 330 U.S. 1, 17 (1947). Nor have courts felt that providing policemen for a religious rally held in a public park or the celebration of a Mass at a mall result in an excessive entanglement. *See O'Hair v. Andrus*, 613 F.2d 931 (D.C. Cir. 1979).

Moreover, in *Widmar* this Court stated that it would be more of an entanglement to require school officials to monitor the content of each group's meetings (in order to enforce the exclusion of religious speech) than it would be to passively permit such speech. The Court stated:

> [T]he University would risk greater "entanglement" by attempting to enforce its exclusion of "religious worship" and "religious speech." . . . Initially, the University would need to determine which words and activities fall within "religious worship and religious teaching." This alone could prove "*an impossible task in an age where many and various beliefs meet the constitutional definition of religion.*" . . . There would also be a continuing need to monitor group meetings to ensure complaince with the rule.

Widmar, 454 U.S. at 271 n.11 (citations omitted) (emphasis added).

Thus, it is clear that *Brandon's* remarks in this area are completely incompatible with prior and subsequent courts' decisions regarding excessive entanglement.

This review of the three prongs of the tripartite Establishment Clause test set forth by this Court demonstrates the absence of any violation in the *Brandon* fact pattern. It follows that such an alleged violation did not provide the necessary compelling state interest required to justify the content-based restriction on the *Brandon* students' rights to free speech. Since the students' free speech rights were restricted, and since the school district offered no other constitutionally acceptable justification for this restriction of rights, the *Brandon* conclusion is irretrievably flawed, directly contradicts the First Amendment to the U.S. Constitution, and requires reversal.

CONCLUSION

When inconsistency and misinterpretation pervade a fundamental area of constitutional law, this Court fulfills its function most nobly by resolving the controversy. The particular area presently before this Court has been fraught with confusion since the Second Circuit issued its ruling in *Brandon v. Board of Edu-*

cation of Guilderland. Moreover, this confusion has recently been compounded with Congress' passage of The Equal Access Act 98 Stat. 98-1302 (1984). Despite the clear constitutionality of that Act, many believe it to be unconstitutional and refuse to adhere to its teachings. *See* Appendix To Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit In The Case Of *Bender v. Williamsport,* Appendix D, letter of October 10, 1984 from Nathan Stuart, Esq. to Gerald Seevers, Esq., p. 111a. It is essential that this Court resolve the present controversy and provide the lower courts with the guidance they so vitally need to interpret our Constitution properly. Such guidance of necessity entails the reversal of the Second Circuit's holding in *Brandon* and the Third Circuit's holding, so indebted to the flawed ruling of *Brandon,* in *Bender.* It is only through such rulings that the importance that all speech, including religious speech, carries in our republican society will be clearly established for all to see and respect.

Respectfully submitted,

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DECEMBER 13, 1984